



The Comptroller General
of the United States

Washington, D.C. 20548

C. Melody

Decision

Matter of: Cerberonics, Inc.
File: B-227175
Date: September 2, 1987

DIGEST

1. Contention that agency's decision to make award under oral request for proposals (RFP) to lowest priced, technically acceptable offeror improperly was based on factors other than those identified to the protester is without merit, since protester was advised of agency's decision to award based on price when RFP was issued, and remarks by contracting officer to protester after RFP was issued and before proposals were due could not reasonably be interpreted to mean that the agency had changed the basis for award.

2. Statutory provision regarding evaluation factors in award of contracts (10 U.S.C. § 2305(a)(3)) does not require that offerors' relative technical quality be included as an evaluation factor in all solicitations; provision requires only that solicitation specify the importance of technical quality relative to the other evaluation factors.

DECISION

Cerberonics, Inc. protests the award of a contract to DALFI, Inc. under oral request for proposals (RFP) No. N68520-87-R-0017, issued by the Navy for engineering and technical support services for the Navy's Metrology/Calibration program. We deny the protest.

Cerberonics was under contract with the Navy through April 1987 to provide the full range of specialized engineering and technical services in support of the Metrology/Calibration program, including both automatic data processing (ADP) and non-ADP requirements. According to the Navy, due to a change in contracting procedures with regard to ADP requirements, a new procurement for both the ADP and non-ADP services required could not be completed before the existing contract with Cerberonics expired. As a result, the Navy orally issued the RFP at issue here to Cerberonics and DALFI for the non-ADP services only, for a 9-month

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period between the expiration of Cerberonics' contract and the anticipated award date of a new contract for the full range of both ADP and non-ADP services. The Navy based its decision to issue the RFP orally and to restrict the competition to Cerberonics and DALFI on the need to maintain continuity in service and the short duration of the anticipated contract.

A Navy contracting official telephoned Cerberonics and DALFI on April 24 to advise them of the RFP and inform them that a written statement of work, contract data requirements list, and wage determination would be available on April 27. According to the contracting official's notes of the conversations, both firms also were told that their proposals, due May 4, would be "evaluated on the lowest price offered."

Cerberonics states that it arranged a meeting with the contracting officer and another Navy contracting official on May 1 in order to clarify the basis upon which award would be made. Cerberonics maintains that based on the contracting officer's statements at that meeting, discussed further below, its representatives concluded that the contracting officer would consider the relative technical quality of the competing proposals as an evaluation factor in the selection decision, rather than making award to the lowest priced, acceptable offeror, as Cerberonics originally had been advised.

Both Cerberonics and DALFI submitted written proposals by the May 4 due date consisting of their proposed prices and labor mix; Cerberonics also submitted a technical proposal discussing in more detail how it proposed to perform. The Navy states that a technical evaluator reviewed the proposed prices and labor mix and confirmed that both offerors were technically acceptable. On May 12, Cerberonics was asked to confirm its proposed price and labor mix; DALFI was asked to review and confirm its proposal, with emphasis on the higher skill levels proposed in the labor mix. Both offerors submitted best and final offers by the May 15 due date, confirming their initial proposals. DALFI's price (\$714,800) was approximately \$147,000 less than Cerberonics' price (\$862,110). Award was made to DALFI on May 22.

According to Cerberonics, at a debriefing on May 28, the Navy told Cerberonics that both offerors were assumed to be technically acceptable and that award was made on the basis of price. Cerberonics filed its protest the next day, May 29, contending that it was improper for the Navy to make award to the lowest priced, technically acceptable offeror without considering the offerors' relative technical quality as an evaluation factor in the award decision.

Cerberonics does not dispute that during its April 24 conversation with the Navy, it was told that the award would be based on price. Cerberonics contends, however, that after its May 1 meeting with the contracting officer, it concluded that the Navy would consider the relative technical quality of the offerors in the award decision. To support its position, Cerberonics submitted an affidavit from its two representatives who attended the May 1 meeting with the contracting officer. In the affidavit, the Cerberonics representatives state that the contracting officer told them that (1) the contract would be awarded to "the technically acceptable firm with the lowest price"; (2) he himself would determine the "technical adequacy" of each firm based on the information in the proposals without delegating that responsibility; and (3) while the RFP required only an oral offer, the Navy "would also accept a written offer comprised of both a price proposal and a technical proposal."

We find no merit to the protest. None of the contracting officer's statements as described by Cerberonics indicates that the offerors' relative technical quality would be a factor in the selection decision; on the contrary, the contracting officer stated, as Cerberonics originally had been told on April 24, that award would be made to the lowest priced, technically acceptable offeror. In addition, the other two statements attributed to the contracting officer--that he would determine the offerors' technical acceptability and that written price and technical proposals would be accepted--are consistent with the Navy's decision to make award based on the lowest price submitted by a technically acceptable offeror, and cannot reasonably be interpreted to mean that the Navy had changed the basis for award. Therefore, we conclude that the Navy did not base the award on factors other than those identified to the protester.

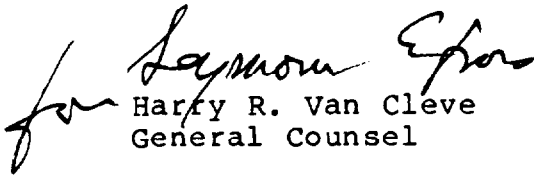
Cerberonics also argues that by failing to consider the offerors' relative technical quality in the award decision the Navy violated 10 U.S.C. § 2305(a)(3), as added by section 924 of the Defense Acquisition Improvement Act of 1986, Pub. L. No. 99-500, 100 Stat. 1783-130, 1783-153 (1986), Pub. L. No. 99-591, 100 Stat. 3341-130, 3341-153 (1986), Pub. L. No. 99-661, 100 Stat. 3910, 3933 (1986), which provides:

"In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency shall clearly establish the relative importance assigned to the quality of the services to be provided (including technical capability, management

capability, and prior experience of the offeror)."

In Cerberonics' view, this provision requires that the relative technical quality of competing proposals be included as an evaluation factor in all RFPs. We disagree. The provision requires only that the contracting agency specify the weight to be given in the evaluation to technical quality relative to the other evaluation factors; we see no basis to conclude that the provision precludes award on the basis of lowest price to a technically acceptable offeror, as Cerberonics suggests. Here, the Navy indicated the relative importance of technical quality in the evaluation scheme by specifying that the award would be made to the lowest priced, technically acceptable offeror.

The protest is denied.


Harry R. Van Cleve
General Counsel